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## DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

## Supreme Court of Appeals.

Note—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

## CLAYVILLE MFG. CO. et al. v. SOUTHERN RY. CO.

Jan. 16, 1913.

[76 S. E. 942.]

**Railroads (§ 60\*)—Discontinuing Stations—Corporation Commission.**—The station Clayville not having facilities equal to Dorset, an older station only nine-tenths of a mile distant, and it being agreed that both stations were not necessary, an order of the State Corporation Commission discontinuing the station at Clayville was proper.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 134, 136; Dec. Dig. § 60.\* 11 Va.-W. Va. Enc. Dig. 562; 14 Va.-W. Va. Enc. Dig. 870.]

Appeal from State Corporation Commission.

Petition by the Southern Railway Company to discontinue its station at Clayville. From an order of the State Corporation Commission discontinuing such station, the Clayville Manufacturing Company and others appeal. Affirmed.

*W. M. Justis, Jr.*, of Richmond, for appellants.

*Williams & Tunstall*, of Norfolk, for appellee.

## BOYENTON v. COMMONWEALTH.

Jan. 16, 1913.

[76 S. E. 945.]

**1. Banks and Banking (§ 4\*)—Statutes—Implied Repeal—Private Bankers—Offenses—"Bank."**—Acts 1893-94, c. 210, making it an offense for any private banker or any employee of any private banker to accept a deposit with knowledge that he or such institution is insolvent, was not impliedly repealed by Acts 1902-3-4, c. 578 (Code 1904, § 1171), creating the same offense with reference to banks, and defining the word "bank" to include banks of deposit and discount, savings banks, savings societies, savings institutions, and trust companies, or other corporation chartered to receive deposits, or do a banking business, since repeals by implication are not favored, and will not be presumed unless the repugnancy is such that both cannot be sustained and construed together.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 3; Dec. Dig. § 4.\* 12 Va.-W. Va. Enc. Dig. 779; 14 Va.-W. Va. Enc. Dig. 955; 15 Va.-W. Va. Enc. Dig. 940.]

For other definitions, see Words and Phrases, vol. 1, pp. 682-689; vol. 8, p. 7587.]

**2. Banks and Banking (§ 20\*)—Offenses—Receiving Deposits While Insolvent—Indictment.**—Act Feb. 12, 1894 (Acts 1893-94, c. 210), makes it an offense for any private banker or his employee to receive money from a depositor with knowledge that such banker was insolvent. Held that an indictment against accused as a private banker, charging that the "Bank of Upperville" was a private bank of which accused was cashier, and that he, knowing that the "bank" was insolvent, feloniously accepted a deposit, etc., but failing to allege the owner or owners of the bank, or that accused was a private banker, or an employee of a private banker, or to charge that "accused" was insolvent when he received the deposit, or that the owner or owners of the bank, or the private banker or bankers, were then insolvent, was fatally defective.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 24; Dec. Dig. § 20.\* 7 Va.-W. Va. Enc. Dig. 403; 14 Va.-W. Va. Enc. Dig. 533; 15 Va.-W. Va. Enc. Dig. 481.]

**3. Banks and Banking (§ 20\*)—Offenses—Receiving Deposits with Knowledge of Insolvency.**—Counts of an indictment charged that accused and J. B. were partners and carried on a private banking business under the style of the "Bank of U.," that accused took and received money from a depositor named with actual knowledge that the firm doing business as the Bank of U. was insolvent, also that accused permitted such depositor to deposit a specified sum with actual knowledge that the firm trading as the Bank of U. was insolvent. Held, that such counts were fatally defective for failure to charge that accused at the time of receiving the deposit had actual knowledge that he and his partner, or either of them, was insolvent; the insolvency of the partnership being insufficient to render accused guilty of a violation of the act.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 24; Dec. Dig. § 20.\* 7 Va.-W. Va. Enc. Dig. 403; 14 Va.-W. Va. Enc. Dig. 533; 15 Va.-W. Va. Enc. Dig. 481.]

**4. Indictment and Information (§ 110\*)—Statutory Offenses—Language of Statute.**—An indictment for a statutory offense should follow the terms of the statute, or use terms which show conclusively or beyond a reasonable doubt that accused is guilty of the offense described in the statute.

[Ed. Note.—For other cases, see Indictment and Information, Cent. Dig. §§ 289-294; Dec. Dig. § 110.\*]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Error to Circuit Court, Fauquier County.

W. H. Boyenton was convicted of receiving a deposit as a private banker, knowing himself to be insolvent, in violation of Acts 1893-94, c. 210, and he brings error. Reversed.

*F. S. Collier*, of Hampton, and *Lett & Massie*, of Newport News, for plaintiff in error.

*The Attorney General*, for the Commonwealth.

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MITCHELL *v.* WILLIAMS.

Jan. 16, 1913.

[76 S. E. 949.]

**Boundaries (§ 40\*)—Trial of Issues—Question for Jury.**—While the question of construction is for the court, the location of a boundary line fixed in defendant's deed "as surveyed" by one N., but not fixed according to the plat made by N., which was complied from different surveys, nor by any courses and distances, and as to which the evidence was conflicting, was for the jury.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 196-204; Dec. Dig. § 40.\* 2 Va.-W. Va. Enc. Dig. 598; 15 Va.-W. Va. Enc. Dig. 139.]

Error to Circuit Court, Culpeper County.

Ejectment by Mrs. Gertrude S. Williams against J. L. Mitchell. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*Grimsley & Miller*, of Culpeper, for plaintiff in error.

*P. L. Williams*, of Huntington, W. Va., *J. L. Jeffries*, of Norfolk, and *Waite & Perry*, of Culpeper, for defendant in error.

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CARTER et al. *v.* THORP.

Jan. 16, 1913.

[76 S. E. 950.]

**1. Notice (§ 14\*)—Burden of Proof.**—The burden of proving notice is on the party alleging it.

[Ed. Note.—For other cases, see Notice, Cent. Dig. §§ 39, 40; Dec. Dig. § 14.\* 10 Va.-W. Va. Enc. Dig. 492; 14 Va.-W. Va. Enc. Dig. 785; 15 Va.-W. Va. Enc. Dig. 744.]

**2. Notice (§ 14\*)—Sufficiency of Evidence.**—While the fact of notice may be inferred from circumstances as well as proved by direct evidence, the proof must be such as to affect the conscience of

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.